

12-8-1997

Timber Harvest Industry. Discharges And Releases Into Watercourses.

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BILL JONES
Secretary of State
State of California

ELECTIONS DIVISION
(916) 657-2166
1500 - 11th STREET
SACRAMENTO, CA 95814
Voter Registration Hotline
1-800-345-VOTE
For Hearing and Speech Impaired
Only
1-800-833-8683
e-mail: comments@ss.ca.gov

December 8, 1997

TO: ALL REGISTRARS OF VOTERS, OR COUNTY CLERKS, AND PROPONENTS (97224)

FROM: *Deirdre Avent*
DEIRDRE AVENT
ELECTIONS ANALYST

SUBJECT: INITIATIVE #775

Pursuant to Elections Code section 3513, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed initiative measure entitled:

**DISCHARGES AND RELEASES INTO
WATERCOURSES FROM TIMBER HARVEST OPERATIONS.
INITIATIVE STATUTE.**

The Proponents of the above-named measure are:

William Verick
William F. Grader, Jr
c/o Mr. James Wheaton
Environmental Law Foundation
1736 Franklin Street, 8th Floor
Oakland, CA. 94612
(510) 208-4555

DEC 11 1997

#775
DISCHARGES AND RELEASES INTO
WATERCOURSES FROM TIMBER HARVEST OPERATIONS.
INITIATIVE STATUTE.

CIRCULATING AND FILING SCHEDULE

1. Minimum number of signatures required: 433,269
California Constitution, Article II, Section 8(b)

2. Official Summary Date:.....Monday, 12/08/97
Elections Code section (EC§) 336

3. Petitions Sections:

a. First day Proponent can circulate Sections for
signatures (EC §336).....Monday, 12/08/97

b. Last day Proponent can circulate and file
with the county. All sections are to be filed at the
same time within each county (EC §336, 9030(a))Thursday, 05/07/98

c. Last day for county to determine total number of
signatures affixed to petitions and to transmit total
to the Secretary of State (EC §9030(b)).....Tuesday, 05/19/98

(If the Proponent files the petition with the county on a date prior to 05/07/98,
the county has eight working days from the filing of the petition to determine
the total number of signatures affixed to the petition and to transmit the total to
the Secretary of State) (EC §9030(b)).

d. Secretary of State determines whether the total number
of signatures filed with all county clerks/registrars of
voters meets the minimum number of required signatures,
and notifies the counties (EC §9030(c))..... Thursday, 05/28/98*

e. Last day for county to determine total number of qualified
voters who signed the petition, and to transmit certificate
with a blank copy of the petition to the Secretary of State
(EC §9030(d)(e)).....Thursday, 07/09/98

* Date varies based upon receipt of county certification.

INITIATIVE #775

Circulating and Filing Schedule continued:

(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 05/28/98, the last day is no later than the thirtieth day after the county's receipt of notification). (EC §9030(d)(e)).

- f. If the signature count is more than 476,596 or less than 411,606 then the Secretary of State certifies the petition as qualified or failed, and notifies the counties. If the signature count is between 411,606 and 476,596 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of all signatures (EC §9030(f)(g); 9031(a))..... Sunday, 07/19/98*
- g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State (EC §9031(b)(c)). Friday, 08/28/98

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 07/19/98, the last day is no later than the thirtieth working day after the county's receipt of notification). EC §9031(b)(c).

- h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient (EC §9031(d); 9033). Tuesday, 09/01/98*

NOTE TO PROPONENTS WHO WISH TO QUALIFY FOR THE NOVEMBER 3, 1998 GENERAL ELECTION: This initiative must be certified for the ballot 131 days before the election (June 25, 1998). Please remember to time your submissions accordingly. For example, in order to allow the maximum time permitted by law for the random sample verification process, it is suggested that proponents file their petitions to county elections official by April 17, 1998. If a 100% check of signatures is necessary, it is advised that the petitions be filed by February 25, 1998.

* Date varies based upon receipt of county certification.

IMPORTANT POINTS

- California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fundraising or requests for support. Any such misuses constitutes a crime under California law. Elections Code section 18650; *Bilofsky v. Deukmejian* (1981) 123 Cal. App. 3d 825, 177 Cal. Rptr. 621; 63 Ops. Cal. Atty. Gen. 37 (1980).
- Please refer to Elections Code sections 100, 101, 104, 9001, 9008, 9009, 9021, and 9022 for appropriate format and type consideration in printing, typing and otherwise preparing your initiative petition for circulation in printing, typing and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- Your attention is directed to the campaign disclosure requirements of the **Political Reform Act of 1974**, Government Code section 81000 et seq. A brief summary is attached for your reference.
- When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- When filing the petition with the county elections official, please provide a blank petition for elections official use.

Enclosures

DANIEL E. LUNGREN
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
(916) 445-9555
Facsimile: (916) 323-2137
(916) 324-5490

December 8, 1997

FILED
In the office of the Secretary of State
of the State of California

DEC 8 1997

Bill Jones
Secretary of State
1500 - 11th Street
Sacramento, CA 95814

BILL JONES, Secretary of State
By *[Signature]*
Deputy Secretary of State

Re: Initiative Title and Summary
Subject: DISCHARGES AND RELEASES INTO WATERCOURSES
FROM TIMBER HARVEST OPERATIONS. INITIATIVE STATUTE.
File No: SA 97 RF 0050

Dear Mr. Jones:

Pursuant to the provisions of sections 9004 and 336 of the Elections Code, you are hereby notified that on this day we mailed to the proponents of the above-identified proposed initiative our title and summary.

Enclosed is a copy of our transmittal letter to the proponents, a copy of our title and summary, a declaration of mailing thereof, and a copy of the proposed measure.

According to information available in our records, the names and address of the proponents are as stated on the declaration of mailing.

Sincerely,

DANIEL E. LUNGREN
Attorney General

[Signature]

MICHELE W. OLSEN
Acting Initiatives Coordinator

MWO:fec
Enclosures

cc: William Verick
William F. Grader, Jr.

Date: December 8, 1997
File No.: SA 97RF0050

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

DISCHARGES AND RELEASES INTO WATERCOURSES FROM TIMBER HARVEST OPERATIONS. INITIATIVE STATUTE. Restricts discharge or release of timber waste by industrial timber owners or operators unless no impairment of quality of waters is demonstrated. Adds new requirements to obtain permits before commencing operations; conduct inspections; monitor compliance; submit annual reports. Imposes permit fees sufficient to cover administrative and enforcement costs. Limits permits to five-year maximum. Provides judicial review of permits issued by regional boards. Allows administrative and civil enforcement actions by public officers or private persons, with burden on defendants to prove compliance. Authorizes injunctions, fines for violations. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Unknown reduction in state and local revenues, potentially a few million dollars annually, to extent timber harvesting is reduced. Unknown long term impact on state and local revenues due to changes in economic activities. State costs for permit process and other regulatory activities by state and regional water boards, potentially in millions to tens of millions of dollars annually, offset by fees. Unknown impact on costs to other state agencies to implement timber harvest regulations; any costs would be offset by fees. Annual savings of about \$13 million to various state funds from filing fee revenues for timber harvest plans.



ENVIRONMENTAL LAW FOUNDATION

1736 Franklin Street, 8th Floor, Oakland, California 94612 • 510/208-4555 • Fax 510/465-6248 •

SA97RF0050

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OCT 32 1997

DIRECTORS

Ralph Santiago
Abascal

California Rural
Legal Assistance

Craig Merrilees
United Brotherhood
of Teamsters

David Nesmith
Sierra Club /
Bay Chapter

Teresa Schilling

James Wheaton
President and
Executive Director

Chappell Hayes
(1948-1994)

17 October 1997

Attorney General Dan Lungren
Deputy Attorney General Rosemary Calderon
1300 I Street
Sacramento, California 95814

Re: Proposed initiatives

Dear Ms. Calderon:

We are the proponents of five initiatives filed with your office on Friday 10 October 1997, numbered SA97RF0047 - SA97RF0051. Please direct all further correspondence and questions from your office or the Secretary of State about those initiatives to:

Mr. James Wheaton
Environmental Law Foundation
1736 Franklin Street, 8th Floor
Oakland, CA 94612
510/208-4555
Fax: 510/465-6248

SENIOR ADVISORS

Professor Robert
Fellmeth
Cm. Public
Interest Law,
University of
San Diego

Al Meyerhoff
Natural Resources
Defense Council

Cordially,

William Verick

William F. Grader, Jr.

RECEIVED

NOV 14 1997

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Verification

I, William Verick, am an official proponent of the attached initiative and request for Title and Summary.

Signed,

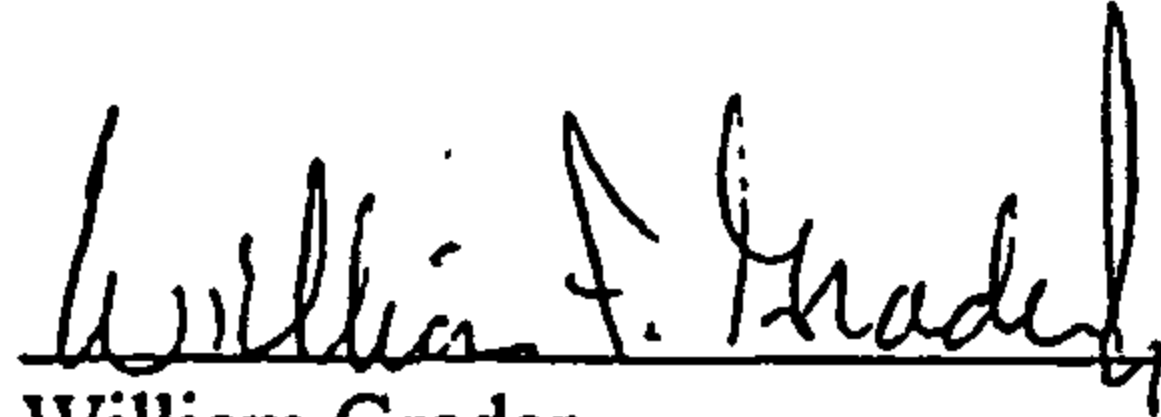

William L. Verick

SA97RF0050

Verification

I, William Grader, am an official proponent of the attached initiative and request for Title and Summary.

Signed,


William Grader



SA 97RF0050

ENVIRONMENTAL LAW FOUNDATION

1736 Franklin Street, 8th Floor, Oakland, California 94612 • 510/208-4555 • Fax 510/465-6248 •

DIRECTORS

Ralph Santiago
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10 October 1997

Attorney General Dan Lungren
Deputy Attorney General Rosemary Calderon
1300 I Street
Sacramento, California 95814

BY HAND DELIVERY

Re: Proposed initiatives

Dear Attorney General Lungren:

Attached hereto for filing are drafts of five individual initiative measures, submitted for Title and Summary of the chief purpose and points of the proposed measures, under the provisions of Elections Code § 9002.

Each is accompanied by a verification containing the original signatures of the two proponents of the measures, Mr. William Verick and Mr. William Grader. A separate sheet with the proponents' residential addresses for verification of their status as registered electors is also attached to this letter. Separate checks for \$200 for each measure are also attached hereto.

Please address all correspondence and questions to me, at the address and phone numbers above, on behalf of the proponents.

Each measure has a suggested Title, which appears at the top of each draft. We will, per your office's suggestion, forward a suggested Summary of the chief purpose and points of each measure, within a week or ten days of this filing, to aid you in your official role.

We look forward to working with you to answer any inquiries you may have about these measures.

Cordially,

James Wheaton

Encl.

**INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO
THE VOTERS**

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

RIVER, LAKE AND STREAM PROTECTION ACT

[set forth summary here]

TO THE HONORABLE SECRETARY OF THE STATE OF CALIFORNIA

We, the undersigned, registered, qualified voters of California, residents of ___ County, hereby propose amendments to various California Codes relating to clean water and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or otherwise provided by law. The proposed statutory amendments (full title and text of the measure) read as follows:

SECTION 1: This Act shall be known as the "River, Lake and Stream Protection Act of 1998."

SECTION 2: Findings and Declarations.

(a) The People of the State of California declare that the waters of this state should be drinkable, fishable and swimmable. The People find that existing law has not given them the safe, clean and healthy rivers, lakes and streams to which they are entitled.

(b) The People further find that protection of fisheries, streams, rivers, lakes, and reservoirs is important to themselves, their children and their children's children. The People find that government agencies do not adequately protect this heritage and these resources. The People therefore declare that they are the sovereign stewards of their waters and shall be entitled to act to protect them when government fails to do so.

(c) The People further find that abundant fisheries are the surest sign of healthy, safe and clean waters. The People find that thriving fisheries benefit not only themselves and their children, but are also necessary for a thriving commerce in fishing and recreation, and that therefore the protection and restoration of clean water and fisheries is of enormous economic benefit to the people of California.

(d) The People further find that all businesses in the State have a responsibility to conduct their business as "good neighbors," being mindful and careful of their effect on their neighbors, the environment, and all of California. The People also find that sustainable forestry practices must be instituted in order to keep the waters of the state in a safe, clean and healthy condition. Without

protections for the health of California's watersheds, inappropriate and unsustainable logging practices will contribute to unsafe, unclean and unhealthy waters, cause the decline of fisheries and the degradation of rivers, increase flooding, silt up the reservoirs upon which the public relies for its drinking water, and increase the risk of pathogens and diseases carried in the public's drinking water.

(e) The People of the State of California hereby enact this initiative for the following purposes:

(1) To prevent the destruction of the public's reservoirs and water systems and the creation of unhealthy conditions in the public's drinking water.

(2) To protect the waters of the State and the public's fisheries from pollutants that affect water quality.

(3) To protect the water quality throughout the State from being degraded by landslides, erosion and runoff caused by industrial logging practices.

(4) To protect and ensure healthy, thriving fisheries and aquatic habitat for the economic and aesthetic benefit of all Californians and for future generations.

SEC. 3. Section 13275 is added to Article 4 of Chapter 4 of Division 7 of the Water Code, to read:

Section 13275. Issuance of waste discharge requirements and dredge and fill permits for discharges or releases of timber waste.

(a) Except as provided in subdivision (b), the discharge or release of timber waste into waters of the State by any timber owner or operator is prohibited, unless the timber owner or operator demonstrates by a preponderance of the evidence that the timber operations will not impair the quality of the waters.

(b) (1) Notwithstanding section 13269, no timber owner or operator in the course of conducting timber operations on timberland shall discharge or release timber waste into waters of the State unless the appropriate regional board has done one of the following:

(A) issued waste discharge requirements and a dredged or fill material permit for such discharge or release; or

(B) certified a timber harvesting plan submitted to the California Department of Forestry pursuant to Article 7 (commencing with section 4581) of Chapter 8 of Part 2 of Division 4 of the Public Resources Code as meeting the requirements of this Section.

(2) The appropriate regional board may issue waste discharge requirements and a dredged or fill material permit, or certify a timber harvesting plan in lieu thereof, only after a public hearing at which the public and other public agencies have an opportunity to submit comments and evidence and only where the timber owner or operator demonstrates by a preponderance of the evidence that the timber operations will not impair the quality of the waters. Timber harvesting plans certified as meeting the requirements of this section for dredged or fill material permits must include at least all the information required by section 1606 of the Fish and Game Code, as that section read on January 1, 1998, and any additional information required by the regional board.

(c) (1) The appropriate regional board, in connection with the issuance of waste discharge requirements and dredged or fill material permits for discharges or releases of timber waste, or the certification of timber harvesting plans in lieu thereof, shall require implementation of controls, including best management practices, best conventional pollution control techniques, and such other provisions as the regional board determines to be necessary, to ensure that the timber operations will not impair the quality of the waters.

(2) Best management practices and best conventional pollution control techniques shall include objective, measurable criteria and standards that enable the public and public agencies to determine that the timber operations will not impair the quality of the waters. Such practices and techniques shall include, but not be limited to, all of the following:

(A) Those practices and techniques certified by the United States Environmental Protection Agency pursuant to Section 208 of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1288);

(B) Those practices and techniques set forth in Section 323.4(a)(6) of Title 33 of the Code of Federal Regulations, as that section read on January 1, 1997.

(C) Monitoring and reporting requirements.

(3) (A) Monitoring requirements shall include requirements that the timber owner or operator do all of the following:

(i) Collect accurate, field verified baseline data regarding water and aquatic habitat quality for the year prior to the year in which timber operations will occur.

(ii) Conduct pre- and post- harvest instream monitoring of all Class I, II and III watercourses, including pre- and post- harvest sampling of water quality parameters affecting the attainment and maintenance of reasonable beneficial uses, including sedimentation, turbidity and temperature.

(iii) Conduct at least one dry season and two wet season inspections annually of all roads, stream crossings, landings and culverts, and all areas on which timber operations have been conducted within the previous five years. All wet season inspections shall be completed between October 15 and May 1 of each year.

(B) Monitoring shall be conducted on all areas subject to each waste discharge requirement and dredged or fill material permit, including all haul roads used for any timber operations subject to any such requirement or permit.

(C) The monitoring results with regard to each waste discharge requirement and dredged or fill material permit, shall be set forth in a written annual report, to be submitted by the timber owner or operator to the appropriate regional board not later than July 1 of each year. The report also shall demonstrate compliance with applicable best management practices and best conventional pollution control techniques, and shall demonstrate that the best management practices and best conventional pollution control techniques are effective in ensuring that the timber operations will not impair the quality of the waters.

(D) Both the monitoring results and the annual report shall be made available to the public. Monitoring shall be conducted and an annual report filed for the year prior to commencement of timber operations, and for each year in which the waste discharge requirements and dredged or fill material permit are in effect and for five years thereafter.

(d) Compliance with the rules and regulations of the Board of Forestry shall not be

deemed sufficient to meet the requirements of this Section. Waste discharge requirements and dredged or fill material permits, or timber harvesting plans certified in lieu thereof, shall be effective for a maximum of five years.

(e) Timber operations shall not commence until thirty days following issuance of waste discharge requirements and a dredged and fill material permit, or certification of a timber harvesting plan in lieu thereof, by the appropriate regional board.

(f) The state board, in consultation with the regional boards, may adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to carry out the requirements of this Section. The regulations shall establish standard best management practices and best conventional pollution control techniques, including measurable, objective criteria and performance standards, and monitoring, sampling and reporting requirements. Timber owners and operators are required to comply with subdivision (a) and (b) of this Section without regard to whether the state board has adopted regulations pursuant to this subdivision.

(g) The appropriate regional board shall impose a fee on the applicant for waste discharge requirements or a dredged or fill material permit, or for certification of a timber harvesting plan, in an amount sufficient to cover its administrative costs of preparing, issuing and monitoring the waste discharge requirements, dredged or fill material permit, or timber harvesting plan certified in lieu thereof.

(h) For purposes of this section, "discharge or release" means depositing, introducing, or dumping, or permitting or allowing the flow or transport of, timber waste that passes or probably will pass into waters of the State. "Discharge or release" includes, but is not limited to, timber waste that passes or probably will pass into waters of the State as a result of landslides, mass wasting, streambed aggradation, road failures, culvert failures, splash erosion, sheet erosion, gully erosion, or debris flows.

SEC. 5. Article 8 (commencing with Section 13366) is added to Division 7 of Chapter 5 of the Water Code, to read:

Article 8. Remedies for Discharges of Timber Waste

Section 13366. Judicial Review of Timber Waste Discharge Requirements and Dredged or Fill Material Permits.

Any person may obtain judicial review in superior court of a decision of a regional board to issue or to not require a waste discharge requirement or a dredged or fill material permit pursuant to Section 13275, or its decision to certify or not require a timber harvesting plan in lieu thereof, by filing, within 60 days from the date of such action by the regional board, an action pursuant to Section 1094.5 of the Code of Civil Procedure. Pursuant to subdivision (c) of Section 1094.5 of the Code of Civil Procedure, abuse of discretion is established if the court, exercising its independent judgment

on the evidence, determines that the agency's decision is not supported by a preponderance of the evidence in the record.

Section 13367. Citizen Suits.

(a) (1) Any person may commence a civil action on his or her own behalf or on behalf of the public against any timber owner or operator for a failure to obtain waste discharge requirements or a dredged or fill material permit pursuant to Section 13275, or to obtain certification of a timber harvesting plan in lieu thereof, or against any timber owner or operator who is alleged to have violated or to be in violation of a waste discharge requirement or a dredged or fill material permit issued pursuant to Section 13275, or a timber harvesting plan certified in lieu thereof.

(2) In any action brought pursuant to this section, the burden shall be on the timber owner or operator to prove by a preponderance of the evidence that it is in compliance with Section 13275 and any applicable waste discharge requirement or dredged or fill material permit issued pursuant to that section, or any timber harvesting plan certified in lieu thereof.

(b) No action may be commenced under subdivision (a) of this section if the state board or appropriate regional board has previously commenced and is diligently prosecuting a civil or administrative action against the alleged violator(s) for the same alleged violation.

(c) In any action brought pursuant to this section, the court has jurisdiction to enforce any applicable requirement of this division, including any waste discharge requirements or dredged or fill material permit issued pursuant to Section 13275, or a timber harvesting plan certified in lieu thereof, and any applicable order of the state board or the appropriate regional board, and to impose any appropriate civil penalties pursuant to Section 13369.

(d) Any action brought pursuant to this Section shall be commenced within four years after the commission of the offense.

Section 13368. Awards of Attorneys' Fees and Costs.

In any action brought pursuant to Section 13366 or Section 13367, the court shall, upon motion, award to a prevailing party that is enforcing this Act, that party's attorneys' fees and costs, including the costs of expert witnesses and consultants, if the following conditions are met:

(a) A significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, and

(b) The necessity and financial burden of private enforcement are such as to make the award appropriate.

Section 13369. Civil Penalties for Discharges or Releases of Timber Waste.

(a) If any timber owner or operator fails to comply with Section 13275 of the Water Code, or otherwise fails to ensure that the timber operations will not impair the quality of the waters of the State, liability shall be imposed as follows:

(1) Civil liability may be administratively imposed by the state board or the appropriate regional board in accordance with Article 2.5 (commencing with Section 13323) for a violation of this section in an amount that does not exceed twenty-five thousand dollars (\$25,000) for each day on which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with this Article and Article 6 (commencing with Section 13360) for a violation of this section in an amount that does not exceed twenty-five thousand dollars (\$25,000) for each day on which the violation occurs.

(b) Each day of operation without a valid waste discharge requirement or dredged or fill material permit, or valid timber harvesting plan certified in lieu thereof, and each day of violation of any best management practice, best conventional pollutant control technique, beneficial use limitation, water quality objective, basin plan limitation, total maximum daily load, antidegradation requirement, or other applicable standard or requirement shall be considered a separate violation for purposes of this section.

(c) All civil penalties collected pursuant to this section shall be deposited into the Commercial Salmon Stamp Account in the Fish and Game Preservation Fund established pursuant to Section 7861 of the Fish and Game Code.

Section 13369.5. Venue.

In any action brought pursuant to Section 13366 or Section 13367, venue shall be in the county in which the violation has occurred or is occurring, or in any county in which the Attorney General maintains an office, notwithstanding Sections 393 and 397 of the Code of Civil Procedure.

Section 13369.6. Prohibition on Conducting Timber Operations.

If any action is brought by any person against a timber owner or operator or a regional board pursuant to Section 13366 or Section 13367, timber operations shall be preliminarily enjoined upon a prima facie showing by the plaintiff that such operations are not in compliance with Section 13275 or with any waste discharge requirement or dredged or fill material permit issued pursuant to that section, or with any timber harvesting plan certified in lieu thereof.

Section 13369.7. Other Remedies.

The remedies in this Article are in addition to, and do not supersede or limit, any and all other remedies available to any person, or to the state board or the appropriate regional board pursuant to this chapter. Nothing in this Article shall alter or diminish any legal obligation otherwise required in common law or by statute or regulation, and nothing in this Article shall create or enlarge any defense in any action to enforce such legal obligation. Penalties and sanctions imposed under this Article shall be in addition to any penalties or sanctions otherwise prescribed by law.

SEC. 6. Section 13369.8 is added to Chapter 2 of Division 7 of the Water Code, to read:

Section 13369.8. Additional Definitions.

In addition to the definitions contained in Section 13050, the following definitions shall apply:

(a) "Timber operations" has the same meaning as defined in section 4527 of the Public Resources Code.

(b) "Timber operator" has the same meaning as defined in section 4526.5 of the Public Resources Code.

(c) "Timber owner" is any person who owns 5,000 acres or more of commercial timber, timberland, or cutover land; or any person who owns rights to harvest timber, including Christmas tree rights, on 5,000 acres or more of lands owned by another. "Timber owner" includes any person, as defined in Section 4525 of the Public Resources Code, and, to the extent authorized by federal law, the United States.

(d) "Timber waste" means all solid, semisolid, and liquid waste materials resulting from timber operations on timberlands, including, but not limited to, the construction and maintenance of roads, fuel breaks, firebreaks, stream crossings, culverts, landings, skid trails, layouts and beds for the falling of trees; fire hazard abatement; and site preparation. Timber waste includes, but is not limited to, slash, dirt, rock, sediment, and other materials that impair the quality of the waters.

(e) "Timberland" is land that is available for, and capable of, growing a crop of trees of any commercial species used to produce lumber and other forest products, including Christmas trees. "Timberland" includes publicly owned land, including, to the extent not inconsistent with federal law, federal land from which timber is harvested for commercial purposes.

(f) For purposes of Section 13275 and Article 8 of Chapter 5 of Division 7 of the Water Code, an activity that "impairs the quality of the waters" is any timber operation that does any of the following:

(1) violates applicable water quality control plans, water quality objectives, total maximum daily loads established under the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), or state or federal antidegradation policies, or that otherwise impairs the quality of the waters for beneficial uses;

(2) creates pollution, contamination, or a nuisance; or

(3) substantially diverts or obstructs the natural flow, or substantially changes the bed, channel or bank of any waters of the state.

Sec. 7 Section 4514.3 of the Public Resources Code is repealed.

~~4514.3. (a) Timber operations conducted pursuant to this chapter are exempt from the waste discharge requirements of Article 4 (commencing with section 13260) of Chapter 4 of Division 7 of the Water Code, provided, that there is a certification by the federal Environmental Protection~~

~~Agency that the provisions of this chapter constitute best management practices for silviculture pursuant to Section 208 of the Federal Water Pollution Control Act.~~

~~(b) The exemption contained in subdivision (a) shall not apply when any of the following occurs.~~

~~(1) The board requests issuance of waste discharge requirements.~~

~~(2) There has been a finding by the State Water Resources Control Board that the board has failed to maintain a water quality regulatory process consistent with the certification required under subdivision (a).~~

~~(3) After monitoring water quality impacts from timber operations conducted in compliance with this chapter, there has been a finding by the State Water Resources Control Board that compliance with best management practices would result in less water quality protection than required in water quality control plans approved pursuant to Section 13245 of the Water Code.~~

SEC. 8. Section 4582.7 of Article 7 of Chapter 8 of Part 2 of Division 4 of the Public Resources Code is amended, to read:

(a) The director shall have 15 days from the date that the initial inspection is completed or, if the director determines that the inspection need not be made, 15 days from the date of filing, as specified in Section 4604, or a longer period mutually agreed upon by the director and the person submitting timber harvesting plan, to review the plan and take public comments. After the initial review and public comment period has ended, the director shall have up to 10 working days, or a longer period mutually agreed upon by the director and the person submitting the plan, to review the public input, to consider recommendations and mitigation measures of other agencies, to respond in writing to the issues raised, and to determine if the plan is in conformance with the rules and regulations of the board and this chapter. Timber operations may not commence until 30 days after the director has found the timber harvesting plan in conformance with the rules and regulations of the board and with this chapter.

(b) If the director determines that the timber harvesting plan is not in conformance with the rules and regulations of the board or with this chapter, the director shall return the plan, stating his or her reasons in writing, and advising the person submitting the plan of the person's right to a hearing before the board, and timber operations shall not commence.

(c) A person to whom a timber harvesting plan is returned may, within 10 days from the date of receipt of the plan, request of the board a public hearing before the board. The board shall schedule a public hearing to review the plan to determine if the plan is in conformance with the rules and regulations of the board and with this chapter. Timber operations shall await shall not commence until 30 days after board approval of the plan. Board action shall occur within 30 days from the date of the filing of the appeal, or a longer period mutually agreed upon by the board and the person filing the appeal.

(d) If the timber harvesting plan is not approved on appeal to the board, the plan may be found in conformance by the director within 10 days from the date of the board action, provided that the plan is brought into full conformance with the rules and regulations of the board and with this

chapter. Timber operations may not commence until 30 days after the date on which the director finds that the plan is in conformance with the rules and regulations of the board and with this chapter. ~~If the director does not act within 25 days, or a longer period mutually agreed upon by the director and the person submitting the plan, timber operations may commence pursuant to the plan, and all provisions of the plan shall be followed as provided in this chapter.~~

(e) Upon the request of a responsible agency, the director shall consult with that agency, pursuant to this chapter, but the director, or his or her designee within the department, shall have the final authority to determine whether a timber harvesting plan is in conformance with the rules and regulations of the board and with this chapter.

SEC. 9. Section 4582.7.1 is added to Article 7 of Chapter 8 of Part 2 of Division 4 of the Public Resources Code, to read:

Section 4582.7.1. Prohibition on Approval of Timber Harvesting Plans.

Notwithstanding any other provision of this chapter, no timber harvesting plan shall be approved unless and until the appropriate regional water quality control board has done one of the following:

- (a) issued to the timber owner or operator waste discharge requirements and a dredged or fill material permit; or
- (b) certified the timber harvesting plan in lieu of issuing waste discharge requirements and a dredged or fill material permit, pursuant to Section 13275 of the Water Code.

SEC. 10. Section 4592.5 is added to Article 7 of Chapter 8 of Part 2 of Division 4 of the Public Resources Code, to read:

Section 4592.5. Timber Harvesting Plan Review Fees.

No timber harvesting plan shall be accepted for filing or approved unless the department, the appropriate regional water quality control board, the Department of Fish and Game, and the Division of Mines and Geology have been fully compensated by the timber owner or operator for the actual costs incurred in administering and enforcing this article, including but not limited to developing regulations, monitoring compliance, and reviewing timber harvesting plans. Each of the above agencies shall adopt a schedule of timber harvesting plan filing fees which meets the requirements of this section. Fees shall be in proportion both to the timber volume proposed to be removed and to the acreage of land upon which timber is proposed to be harvested.

SEC. 11. Section 1606 of the Fish and Game Code is repealed.

~~Section 1606. Persons submitting timber harvesting plans under provisions of Section 4581 of the Public Resources Code may consider that notification to the department as required in Section~~

~~1603 has been given, provided, however, the following information is provided in the contents of such plan:~~

~~(a) The volume, type, and equipment to be used in removing or displacing any one or combination of soil, sand, gravel, or boulders.~~

~~(b) The volume of water, intended use, and equipment to be used in any water diversion or impoundment, if applicable.~~

~~(c) The equipment to be used in road or bridge construction.~~

~~(d) The type and density of vegetation to be affected and an estimate of the area involved.~~

~~(e) A diagram or sketch of the location of the operation which clearly indicates the stream or other water and access from a named public road. Locked gates shall be indicated. The compass direction must be shown.~~

~~(f) A description of the period of time in which operations will be carried out.~~

SEC. 12. Section 1606.5 is added to the Fish and Game Code to read:

Section 1606.5. A timber owner or operator, as defined in Section 13050.5 of the Water Code, shall not be required to notify the Department of an activity that may substantially divert or obstruct the natural flow, or substantially change the bed, channel or bank of any river, stream or lake pursuant to section 1601 or 1603 if the timber owner or operator meets the requirements of section 13275 of the Water Code.

SEC. 13. The provisions of this Act are severable. If any provision of this Act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 14. The provisions of this Act shall be liberally construed to give effect to its purposes.

SEC. 15. All references to sections of the California Codes that existed prior to enactment of this Act are to those sections as they read on January 1, 1998.